SENATE TAXATION
EXHIBIT NO. 8
DATE 2-6-07
BILL NO. SB-138

1. ***<u>Does SB 138 represent an attempt to impose an additional tax upon insurance companies</u>***?

No. SB 138 only impacts corporations who pay corporation license tax or corporate income tax under Title 15, Chapter 31.

SB 138 will not cause insurance companies to pay tax because insurance companies are not subject to taxation under Title 15, Chapter 31 (assuming the company pays premiums tax in Montana.) Thus, any taxation resulting from the passage of this legislation, if any, would be borne by "regular" corporations that own an insurance subsidiary.

2. ***<u>Some legitimate insurance companies own "regular" corporations. How will SB 138 impact this dynamic</u>***?

SB 138 will not impact situations where an insurance company owns a "regular" company for investment purposes. SB 138 only addresses "regular" corporations that own an insurance company. This can be seen from the following examples:

a. After examining the definition of a "dividend" and a "qualified dividend" (Section 1), the possible reduction of a dividends received deduction taken by a <u>regular corporation</u> could only occur if all of the following are met:

i. Regular corporation received a dividend

ii. Insurance company paid the dividend;

iii. Regular corporation **<u>owns</u>** the insurance company; and

iv. The insurance subsidiary was overcapitalized

b. Sections 5 and 6 address possible inclusion of income resulting from certain property transfers (Section 5) or other events (Section 6). By repeatedly referencing the "taxpayer" who transfers property to an insurer, and the "taxpayer subject to tax under this chapter…", both sections make it clear that any income inclusion that may result only refers to "regular" corporations who pay tax under Title 15, Chapter 31.

3. ***<u>How does SB 138 impact "regular corporations" that own legitimate insurance subsidiaries</u>***?

SB 138 should not impact these corporations due to Section 7's relief provision that is included in the Department's amendment. As Section 7 illustrates, the provisions of SB 138 do not serve to increase corporate tax on regular corporations whose insurance subsidiaries are not "over-stuffed." Even if an insurance subsidiary is "over-stuffed", if the transaction at issue served a legitimate business purpose, the Department may grant relief.

4. ***If SB 138 is passed, will the DOR be able to regulate the insurance industry?***

No. The DOR can find no provision in SB 138 that would purport to grant the DOR explicit or implied regulatory authority over the insurance industry.

5. ***How will the DOR enforce the provisions contained in SB 138?***

Any information/data required would flow between the DOR and the regular corporation on the regular corporation's annual state tax return. SB 138 does not impose any reporting requirements on an insurance company.